

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:17-cv-00048-MOC-DLH

HELEN HOLLAND,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
FULENWIDER ENTERPRISES INC.)	
TOM HIRUNPUGDI)	
PHOENIX TACO L.L.C)	
ERSKINE WHITE)	
MICHAEL FULENWIDER,)	
)	
Defendants.)	

THIS MATTER is before the court on plaintiff's Motion for FLSA Conditional Collective Action Certification and Notice (#3) and defendants' Response (#11). No reply has been filed. The motion is now ripe for disposition.

The Motion and the Response contain competing affidavits. While plaintiff's affidavit paints a picture of an employee allegedly misclassified as an assistant manager, defendants' responsive affidavits – from a number of similarly situated assistant managers – would tend to show employees allegedly exempt under the FLSA. In determining whether to conditionally certify the class, whether the alleged misclassification cuts across the putative class is an important consideration for this Court. Although “there is no prohibition against a court making credibility determinations based on competing affidavits in certain circumstances,” Strong v. Johnson, 495 F.3d 134, 139 (4th Cir. 2007), review of the pleadings reveals that an evidentiary hearing would “add to the proceedings” as it would provide the Court with an opportunity to gauge credibility as

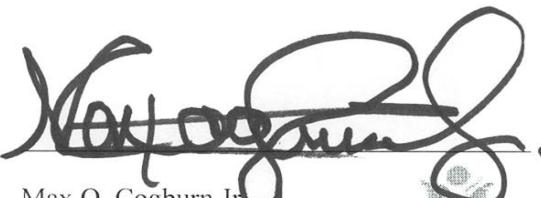
credibility is difficult to discern from affidavits. United States v. Barsanti, 943 F.2d 428, 440 (4th Cir. 1991). At the evidentiary hearing, the Court will hear the testimony of any affiant either side wishes to call concerning the duties of assistant managers at defendants' restaurants. The hearing will be limited to one hour.

The Court notes defendants' argument that plaintiff made nearly identical allegations in Holland v. Bojangles Restaurants Inc., 3:17cv50-RJC (W.D.N.C. 2017) (closed 3/22/2017). To that end, the parties may wish to be prepared to briefly explore that aspect of this case at the hearing.

ORDER

IT IS, THEREFORE, ORDERED that plaintiff's Motion for FLSA Conditional Collective Action Certification and Notice (#3) be **CALENDARED** for an **EVIDENTIARY HEARING** on the next available civil hearings date and such hearing is limited to one hour.

Signed:May 2, 2017



Max O. Cogburn Jr.
United States District Judge

